

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION**

**JOHN D. ROSS
ADC #158910**

PLAINTIFF

v.

Case No. 2:20-cv-00235-KGB-JJV

**GREG RECHCIGL,
Health Services Administrator, EARU, *et al.***

DEFENDANTS

ORDER

Before the Court are the Proposed Findings and Recommendations (“Recommendations”) submitted by United States Magistrate Judge Joe J. Volpe regarding separate defendants Griffin, Lay, Andrews, Dycus, and Allison’s motion for summary judgment on the issue of exhaustion (Dkt. No. 78). Written objections to the Recommendations have been submitted (Dkt. Nos. 81, 82, 85). After careful consideration of the Recommendations and all objections, and after a *de novo* review of the record, the Court adopts the Recommendations as the Court’s findings of fact and conclusions of law in all respects (Dkt. No. 78). Therefore, the Court grants, in part, and denies, in part, separate defendants Griffin, Lay, Andrews, Dycus, and Allison’s motion for summary judgment on the issue of exhaustion (Dkt. No. 75).

The Court writes to address the objections (Dkt. Nos. 81, 82, 85). Separate defendant Dycus filed objections contending that, although grievance EA-20-00594 names him, recites actions he allegedly took, and was responded to on the merits by the Arkansas Department of Correction, he should be dismissed as a party from this lawsuit on the basis that Mr. Ross failed to exhaust his administrative remedies as to separate defendant Dycus (Dkt. No. 81). The Court overrules the objection for the reasons explained by Judge Volpe in his Recommendations (Dkt. No. 78, at 9-11). Separate defendant Dycus is not entitled to dismissal without prejudice on the

basis of exhaustion—which is the only issue currently before the Court.

Mr. Ross submitted objections and supplemental objections to Judge Volpe's Recommendations (Dkt. Nos. 82, 85). The Court has carefully reviewed and considered Mr. Ross's submission and reviewed *de novo* the record. On these issues of exhaustion, the Court adopts Judge Volpe's Recommendations.

The Court adopts the Recommendations (Dkt. No. 78). As a result, the Court grants, in part, and denies, in part, the motion for summary judgment on the issue of exhaustion filed by certain defendants (Dkt. No. 75). The Court dismisses without prejudice for failure to exhaust his administrative remedies Mr. Ross's claims against separate defendants Griffin, Lay, Andrews, and Allison, and the Court dismisses without prejudice separate defendants Griffin, Lay, Andrews, and Allison as parties from this case. The Court denies the motion for summary judgment on the issue of exhaustion filed by separate defendants Dycus and permits Mr. Ross to proceed on his claims against separate defendant Dycus that were exhausted in grievance EA-20-594 and all other claims not the subject of the pending motion for summary judgment on the issue of exhaustion (Dkt. No. 75). The Court certifies pursuant to 28 U.S.C. § 1915(a) that an *in forma pauperis* appeal taken from this Order would not be taken in good faith.

It is so ordered this 28th day of February, 2022.



Kristine G. Baker
United States District Judge